No. 95-1410 (2)

Supreme Court, U.S.
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In The Supreme Court of the United States

October Term, 1995

THOMAS J. DART, et al.,
Petitioners

v.

W. A. DART, et al.,
Respondents

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Michigan

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

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48 pp

QUESTION PRESENTED

Whether the Michigan Probate Court erred in concluding that, under the particular facts of this case, Petitioners' RICO claim was *in rem* or *quasi in rem* and therefore enjoinable under this Court's ruling in *Princess Lida of Thurn and Taxis v. Thompson*, 305 U.S. 456 (1939).

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I.

STATEMENT OF THE CASE

In February 1992, Petitioner Tom Dart filed the present lawsuit against his parents and brothers in Ingham County (Michigan) Probate Court, challenging the reorganization of trust assets to which he had expressly agreed over five years previously. After the Michigan Probate Court dismissed most of his claims based on the statute of limitations, Tom married Petitioner Judy Dart, who joined the trust litigation. Then, after almost a year and a half of unsuccessfully litigating the claims they brought in the Michigan Probate Court, Petitioners filed a similar lawsuit in Florida state court, again claiming that the trust reorganization was improper. Sarasota County (Florida) Circuit Court First Amended Complaint, September 14, 1993. (Resp. App. A 2a-4a.)

Petitioners never identified any harm in having to litigate all their claims in Michigan, since, after all, they are Michigan residents, the reorganization took place in Michigan, and they had originally chosen to litigate in the Michigan forum. Moreover, Petitioners insisted that *only* the Michigan Probate Court had jurisdiction over the trusts: "The consequence of the Probate Court's exclusive jurisdiction is that 'no other forum has the jurisdiction to hear and determine the action.'" Petitioners Memorandum of Law in Response to Brief in Support of Motion to Compel Arbitration and Stay The Proceedings (May 12, 1992). (Resp. App. B 6a.)

After lengthy hearings and briefing, the Michigan Probate Court ruled that Petitioners should be enjoined from maintaining similar claims concerning the trusts in other forums. *See* Order Enjoining Petitioners Thomas J. Dart and Judith L. Dart From Prosecuting Duplicative Litigation. (Pet. App. 1a.) The Michigan Probate Court specifically found that the duplicative Florida suit was an attempted "end-run" around rulings of the court, and it constituted "oppression." Tr. September 29, 1993. (Resp. App. C 8a.)

The Circuit Court affirmed the injunction. Order Affirming Injunction, May 17, 1994. (Resp. App. D 10a.) The Michigan

Court of Appeals subsequently denied Petitioners' application for leave to appeal for lack of merit. (Pet. App. 61a.) Petitioners attempted no further appeals, conclusively establishing the validity of the injunction.

Despite having already been found to have engaged in forum-shopping and ordered to desist, on July 8, 1994, Petitioners filed yet *another* lawsuit, this time in Florida federal court, alleging that the trust reorganization was a violation of the federal RICO act. 18 U.S.C. § 1961, *et seq.* (Pet. App. 8a-51a.) In the RICO complaint, they essentially claimed that Tom Dart's parents and brothers engaged in a criminal racketeering enterprise designed to destroy his trust. (Pet. App. 8a.)[1] Petitioners did not ask the Michigan Probate Court for clarification of the scope of the injunction before filing their federal lawsuit, or notify the court that they were planning such a lawsuit.

Petitioners say they were forced to violate the injunction without first seeking clarification from the Michigan Probate Court, because the four year RICO statute of limitations was about to expire on July 11, 1994. (Petition, p. 4.) However, Petitioners have concealed some crucial facts from this Court. Their Petition fails to disclose that on July 8 and 11, 1994, they also filed new pleadings in the Michigan Probate Court, asserting the very same federal RICO claims as in their Florida federal suit. *See* Tom and Judy Dart's Civil Complaint, July 11 1994. (Resp. App. E 12a-21a.)[2] Consequently, there was no need to run to Florida to assert the federal RICO claims, since these claims were part of the Michigan Probate case and state courts have concurrent jurisdiction over federal RICO claims. *See*, *Taffin v. Levitt*, 493

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[1] This was a rehash of the claim in their prior Florida state court action that the defendants "engaged in a pattern of criminal activity through an enterprise . . . and have conspired to purposefully defraud the plaintiffs . . . ." (Resp. App. A 4a ¶ 149.)

[2] The other two Michigan Probate Court pleadings, Judy Dart's First Amended Petition, and Tom Dart's Second Amended Petition, contain virtually identical RICO claims as their Civil Complaint (which is attached as Resp. App. E 12a-21a).

U.S. 455 (1990). Petitioners avoided any statute-of-limitations problem by filing the RICO claims in the Michigan Probate Court.[3]

Petitioners later voluntarily dismissed their federal RICO claims from the Michigan Probate case, to make it look as if they have been deprived of the right to litigate these claims. Notice of Voluntary Dismissal, September 2, 1994. (Resp. App. H 27a-28a.)

On July 29, 1994, respondents petitioned the Michigan Probate Court for an order to show cause why Petitioners should not be held in contempt for violating the injunction. The hearing was adjourned at Petitioners' request and the parties filed briefs addressing the issue that Petitioners now raise before this Court.[4] After considering the briefs and oral arguments, the Michigan Probate Court found Petitioners in civil contempt, holding that Petitioners knowingly violated the injunction. (Pet. App. 75a.) The Michigan Probate Court found that the federal RICO claim was virtually identical to the previous claim under Florida's criminal enterprise statute and so was covered by the injunction. (Pet. App. 75a.) Noting that "basically [Petitioners' federal suit] is an action against the Trustee concerning the administration of the Trusts and Trust property," and therefore is *in rem* or *quasi in rem*, the Probate Judge relied on federal precedents in determining that the injunction could properly be enforced against Petitioners. (Pet. App. 70a-75a.)

The Michigan Probate Court deferred sentencing for two months to give Petitioners the opportunity to purge the contempt

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[3] Further, Petitioners contend they only realized at the last minute that they had a RICO cause of action, because they had just discovered a crucial July 11, 1990, meeting between Tom Dart and W.A. Dart. (Petition, p. 4.) Yet Petitioners' own pleadings prove that they and their counsel had known all about that meeting for years. *See* Tom Dart's First Amended Petition (October 2, 1992) ¶ 77 (specifically complaining about the July 1990 meeting). (Resp. App. F 23a.) *See also* W.A. Dart's Deposition Tr. August 26, 1992 (where Petitioners' counsel interrogated W.A. Dart about the July 11, 1990, meeting). (Resp. App. G 25a.)

[4] Petitioners suggest they were not allowed to brief or argue the *in personam/in rem* issue, but Petitioners' counsel did argue the issue at the August 18th hearing. The Michigan Probate Court expressly addressed the doctrines and precedents cited by Petitioners. (Pet. App. 70a-75a.)

by dismissing their federal lawsuit. (Pet. App. 76a.) *See also*, Order Finding Petitioners Thomas J. Dart and Judith L. Dart in Civil Contempt of Court. (Pet. App. 52a.) In the interim, Petitioners made some cosmetic modifications to their Florida federal complaint, dismissing Dart Financial Corporation and the trusts as defendants. At the sentencing hearing on October 14, 1994, the Michigan Probate Court held that "the Trusts and the Trustee are really inextricably a part of this Federal RICO action and that dismissing the Trusts as defendants, and the Corporate Trustee as a defendant, does not mean that the trusts and the Trustee are not still involved in that." (Pet. App. 77a.) Further, the Michigan Probate Court noted that the federal complaint said: " 'At all times material hereto, W.A. Dart has acted as Trustee of T-1, T-2, and T-3. . . .' " (Pet. App. 78a.) The court concluded: "[T]he Trusts are still involved, the Trustee is still involved. The Trustee at the time of these alleged improper actions, and the RICO suit, is still a defendant." (Pet. App. 78a.)

In light of this ruling, Petitioners avoided sanctions by means of a stipulated Order "to permit Thomas J. Dart and Judith L. Dart to purge themselves of such contempt". (Pet. App. 56a.) The order further provided that if Petitioners dismissed the Florida federal suit in its entirety by the end of business on October 18, 1994, the RICO statute of limitations would be tolled and the dismissal would be without prejudice; however, if they failed to do this, Petitioners would be sentenced for contempt on October 19, 1994. Petitioners immediately dismissed the federal suit. Notice of Stipulated Dismissal. (Pet. App. 59a-60a.) Because they purged themselves of contempt, Petitioners were never sanctioned.

The Michigan appellate courts affirmed the order finding Petitioners in contempt. The Circuit Court subsequently denied Petitioners' application for leave because it lacked merit (Pet. App. 82a), as did the Court of Appeals. (Pet. App. 63a.) Finally, the Michigan Supreme Court denied Petitioners' application for leave to appeal. (Pet. App. 65a.) None of the Michigan courts issued written — let alone published — opinions.

This case has been pending for more than four years. Petitioners slowed the proceedings to a virtual standstill by filing over a dozen interlocutory appeals, from almost every significant adverse ruling,

and filing duplicative lawsuits in courts outside Michigan. Finally, however, trial is scheduled to begin later this year, unless Petitioners succeed in further delaying the case by means of their pending Petition.

II.

SUMMARY OF ARGUMENT

This Court should not grant review of the unpublished interlocutory orders as requested by the petition.

First, the appeal is moot since Petitioners purged the contempt by complying with the Michigan Probate Court's injunction. "Purging ends the state of contempt and thereby extinguishes any contempt appeal." *In re Grand Jury Subpoena*, 955 F.2d 670, 672 n.3 (11th Cir. 1992).

Second, there is no final judgment or order to review. Civil contempt orders against parties are not final for purposes of appeal, even after sanctions are imposed (and here no sanctions have been imposed).

Third, the Petition challenges the validity of the injunction, even though Petitioners previously exhausted their appeals from the injunction. A party cannot collaterally attack the underlying injunction in a contempt proceeding, particularly where the injunction has already been conclusively affirmed on appeal.

Fourth, there is no genuine conflict in the reported cases warranting this Court's intervention. All the cases agree on the law concerning injunctions against federal litigants. Petitioners merely contend that the Michigan courts erred in applying the law to the facts of this case.

Finally, the decision of the Michigan Probate Court was perfectly correct on the merits. The federal RICO suit was *in rem*

or *quasi in rem*, as it directly involved the trusts and the trust assets, and thereby interfered with the Michigan Probate Court's jurisdiction over the trust estate.

III.

REASONS FOR DENYING THE WRIT

A. PROCEDURAL BARRIERS TO REVIEW

Petitioners have already had multiple levels of appellate review. There are no exceptional circumstances warranting further review by this Court — indeed, there are compelling reasons not to grant review.[5]

1. The Appeal is Moot Since Petitioners Purged The Contempt

Petitioners purged the contempt and avoided sanctions by dismissing their federal lawsuit. In so doing, they waived appellate review of the contempt finding.

" 'A long line of precedent holds that once a civil contempt order is purged, no live case or controversy remains for adjudication. . . .' Once a contemnor has purged his contempt, he sacrifices his ability to challenge the merits of the underlying contempt order. . . ." *In re Grand Jury Subpoena*, 955 F.2d at 672 (quoting *In re Campbell*, 628 F.2d 1260, 1261 (9th Cir. 1980)). Thus in *In re Hunt*, 754 F.2d 1290 (5th Cir. 1985), a party was held in contempt for violating an anti-suit injunction which prevented him from prosecuting certain litigation. He abandoned the litigation, and the court held: "[T]he issue of the propriety of

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[5] The Michigan Supreme Court denied leave to appeal because it was "not persuaded that the questions presented should now be reviewed by this Court." (Pet. App. 65a.) This could either mean that the Michigan Supreme Court considered the contempt appeal to be untimely because it was a belated collateral challenge to the injunction, or because the contempt had been purged, or because it was interlocutory. This ambiguous ruling is yet another reason why the case is not appropriate for this Court to consider.

the contempt judgment . . . is moot. Generally, the discharge of a civil contempt . . . moots any appeal of the contempt judgment." 754 F.2d at 1293.

2. The Contempt Order Is Unreviewable Because It Is Not Final

In addition, the contempt finding is not a final appealable order. First, the contempt finding is not final because the Michigan Probate Court did not impose any sanction on Petitioners. *See Jacobsen v. U.S. Postal Service*, 993 F.2d 649, 662 (9th Cir. 1992), which held "an adjudication of civil contempt is not appealable until sanctions have been imposed." (Quoting *Donovan v. Mazzola*, 761 F.2d 1411, 1417 (9th cir. 1985)). Second, even if sanctions had been imposed, a civil contempt order entered against a party is interlocutory and cannot be appealed until after final judgment. *Fox v. Capital Co.*, 299 U.S. 105, 107 (1936) ("The rule is settled in this Court that except in connection with an appeal from a final judgment or decree, a party to a suit may not review upon appeal an order fining or imprisoning him for the commission of a civil contempt"); 9 JAMES W. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶110.13 (2d ed. 1995) ¶110.13(4), pp. 148-149 ("a sentence of civil contempt . . . is a nonappealable interlocutory order"). Thus, there is no "final judgment or decree" that could confer jurisdiction on this Court. 28 U.S.C. § 1257.

Petitioners cite *General Atomic Co. v. Felter*, 434 U.S. 12 (1977), to suggest that a civil contempt order is properly reviewable by this Court. (Petition, p. 9 n.4.) Contrary to Petitioners' assertion, *General Atomic* did not involve a contempt order, so there was no occasion to consider the finality or reviewability of contempt orders. In *General Atomic*, the Court granted certiorari to review an injunction and a writ of prohibition, which are reviewable on wholly independent statutory grounds not applicable here. *See* 28 U.S.C. § 1292(a)(1); *Madruga v. Superior Court of California*, 346 U.S. 556 (1954) (the "State Supreme Court's judgment finally disposing of the writ of prohibition is a final judgment reviewable here under 28 U.S.C. § 1257."). Therefore, Petitioners' reliance on *General Atomic* is misplaced.

3. The Validity Of The Injunction Cannot Be Collaterally Challenged In This Contempt Proceeding

On the one hand, Petitioners state that their unsuccessful appeals of the injunction "are not at issue in this Petition," and that they are only seeking review of the finding of contempt (Petition, p. 4). On the other hand, their very first question for review asks whether the Michigan Probate Court erred when it "enjoined petitioners from exercising their right. . . ." (Petition, p. i). The rest of the Petition is *entirely* devoted to a collateral attack on the injunction. This is improper.

A party cannot collaterally attack the propriety of an injunction through contempt proceedings. "It would be a disservice to the law if we were to depart from the long-standing rule that a contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed and thus become a retrial of the original controversy." *Maggio v. Zeitz*, 333 U.S. 56, 69 (1948). Even an *unconstitutional* injunction cannot be collaterally attacked in a contempt proceeding. *Walker v. Birmingham*, 388 U.S. 307 (1967) (affirming the contempt finding and refusing to decide the constitutional challenge to the injunction because "defendants were precluded from attacking it in this collateral proceeding").

Petitioners already appealed the validity of the injunction and lost. Petitioners cannot now collaterally contest the validity of the injunction in this contempt appeal.[6]

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[6] Petitioners suggest that this Court can review the injunction in connection with the contempt appeal, relying on *General Atomic* (Petition, p. 9, n. 4). However, in that case there was no prior exhaustion of appeals from the injunction, no contempt adjudication, and no collateral attack on the injunction. The matter came to this Court directly on review of the validity of the underlying injunction.

Petitioners may argue that they never raised this challenge to the injunction before because they did not realize the injunction would preclude them from filing an action in federal court. However, this argument is refuted by the Michigan Probate Court's findings that they committed "a knowing violation" of the injunction by filing in federal court and they deliberately filed in federal court because they "weren't succeeding in the Florida action, or the Michigan action." (Pet. App. 75a.) The Petition does not raise this as a formal question presented for review because the Michigan Probate Court's finding that they defied the injunction raises only a fact-bound issue of state law.

B. THE PETITION DOES NOT PRESENT ISSUES WORTHY OF THIS COURT'S REVIEW

1. There Is No Conflict Regarding The Applicable Law

Petitioners contend that the orders of the Michigan courts in this case are in conflict with the decisions of this Court. (Petition, pp. 9-12). But the Michigan courts did not disagree with legal principles embraced in the decisions of this Court. Instead, the Michigan courts expressly *relied on* the rule of law that this Court announced in *Princess Lida of Thurn and Taxis v. Thompson*, 305 U.S. 456 (1939), *General Atomic*, 434 U.S. 12 (1977), and *Donovan v. Dallas*, 377 U.S. 408 (1964) — a state court cannot enjoin *in personam* federal actions, but can enjoin litigants from pursuing *in rem* and *quasi in rem* federal actions that would interfere with the administration of an estate.

The only issue is whether, given the particular circumstances of the trust assets and the nature of Petitioners' RICO claims, Petitioners' federal action is *in personam* or *in rem* or *quasi in rem*. That is a narrow, fact-bound issue without wide-ranging application to other cases. The Court should not grant this Petition, since "the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." (SUP. CT. R. 10(C)).

2. There Is No Genuine Issue Whether State Law Applies To The Determination That An Action Is *In Personam* or *In Rem*

There has never been a dispute in this case whether state or federal law governs the validity of an injunction preventing parties from prosecuting a federal lawsuit. The Michigan Probate Court stated: "I am compelled to follow the Federal law here, United States Constitution, United States Supreme Court's decisions, and hold that this is In Rem." (Pet. App. 73a.)

In order to demonstrate a conflict, Petitioners first need to show that there are different rules, otherwise it is a "false conflict". *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797

(1985). There is no hint in any of the cases cited by Petitioners that there is a federal rule for deciding whether an action is *in rem* that varies in any way from the rule of any state or the rule that the Michigan courts applied. Petitioners' attempt to demonstrate that the courts are "divided" proves nothing except that the application of undisputed legal principles to differing facts often yields differing results.

Petitioners distort the facts in an attempt to state an appealable issue, claiming that "the Michigan courts appear to have applied (at best) their own state law concepts of an in rem, quasi in rem and in personam jurisdiction. . . ." (Petition, p. 14). The record demonstrates that the Michigan courts did not invoke state law. Instead, the Michigan courts relied entirely on federal precedent on this issue — *Princess Lida*, *Donovan v. Dallas*, and the strikingly similar case of *Cassity v. Pitts*, 995 F.2d 1009 (10th Cir. 1993). (Pet. App. 70a-75a.)

3. There Is No Genuine Issue Whether The State Court Has The Authority To Determine That An Action Is *In Personam* or *In Rem*

Without citing any direct authority, Petitioners argue that the Michigan Probate Court should not have even attempted to decide whether the action was *in rem* — that the decision had to be left to the federal court. (Petition, pp. 15-16.) This is inconsistent with *Princess Lida*, *Donovan v. Dallas*, and *General Atomic*. In *Princess Lida*, the state court made the determination as to the nature of the federal action, and this Court upheld this decision. In *Donovan v. Dallas* and *General Atomic*, the state court also made the determination of whether the action was *in rem* or *in personam*. If the rule that Petitioners urge were correct, this Court would have overturned the state court action simply by virtue of the fact that the state court had made the determination. The Court did not take that approach. Therefore, Petitioners' theory that a state court may not decide whether an action is *in rem* or *in personam* fails.

4. The Probate Court Correctly Ruled, Under The Unique Facts Of This Case, That Petitioners' RICO Claim Was *In Rem* Or *Quasi In Rem*, Because It Centers On The Administration Of A Trust And The Duties Of The Trustee, And Interferes With Prior State Court Jurisdiction Over The Trust

Stripped of its verbiage, the Petition presents only one issue — the fact-bound inquiry of whether in this particular case the Michigan Probate Court erred in concluding that Petitioners' RICO action was *in rem* or *quasi in rem*. Everyone agrees that if this particular RICO action was *in personam*, then *Donovan v. Dallas* and *General Atomic* apply and there should have been no finding of contempt. Likewise, everyone agrees that if it was *in rem* or *quasi in rem*, then *Princess Lida* applies and the contempt finding was permissible. Petitioners have not shown that there is any confusion in the lower courts concerning application of these rules or that review of the Michigan decision would have any significance outside of this particular dispute. The issue is therefore not of sufficient importance to warrant this Court's attention.

In any event, the Michigan Probate Court's ruling was correct. The Michigan courts followed this Court's settled rule:

> [w]here the judgment sought is *strictly in personam*, both the state court and the federal court, having concurrent jurisdiction, may proceed with the litigation at least until judgment is obtained in one of them which may be set up as res judicata in the other. On the other hand, if the two suits are *in rem, or quasi in rem*, so that the court, or its officer, has possession or must have control of the property which is the subject of the litigation in order to proceed with the cause and grant the relief sought the jurisdiction of one court must yield to that of the other. *We have said that the principle applicable to both federal and state courts that the court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other*, is not restricted to cases where property has been actually seized under judicial process

> before a second suit is instituted, but applies as well where suits are brought to marshall assets, *administer trusts*, or liquidate assets, and in suits of a similar nature where, to give effect to its jurisdiction, the court must control the property.

Princess Lida, 305 U.S. at 466 (emphasis added) (citations omitted). Petitioners' reliance on cases that bar a state court from enjoining parties from pursuing strictly *in personam* federal actions is misplaced, since these same cases explicitly recognize the *Princess Lida* exception for *in rem* and *quasi in rem* cases. *E.g.*, *Donovan v. Dallas*, 377 U.S. at 412.

In assessing the nature of the Florida federal action, the Michigan Probate Court relied extensively on *Cassity*, *supra.*, which is almost exactly on point. (Pet. App. 70a-73a.) There, when trust beneficiaries received adverse results in a state probate court proceeding concerning alleged breaches of duty by the trustee, they filed a federal court RICO action seeking damages for the trustee's misrepresentations. The Federal District Court yielded jurisdiction to the state probate court. The Court of Appeals affirmed, noting that the beneficiaries could bring their federal RICO claims in state court. The court flatly rejected the beneficiaries' argument that RICO claims for money damages were strictly *in personam*. The court followed *Princess Lida*, explaining that a suit is *in rem* or *quasi in rem* if it "concerns or determines the ownership, control and administration of a trust and the powers, duties and liabilities of the trustees...." *Cassity*, 995 F.2d at 1012. The court further explained:

> [m]ost of the allegations in the complaint make reference to the trust assets or the wrongful acts and representations of Trustees. Thus, to rule on the misfeasance of Trustees would require the court to

> construe Trustees' duties in light of the trust and the Settlement Agreement upheld by the [state probate court]. *Id.*[7]

As in *Cassity*, Petitioners' Florida federal complaint concerns the allegedly improper administration of the trust and breach of trust duties. The allegations in the Florida federal complaint (1) revolve around the trusts and the corporations that are wholly owned by the trusts; (2) arise out of a trust transaction already being litigated in the Michigan Probate Court; and (3) are based on alleged injuries to Petitioners' beneficial interests in the T-1 trust. As the Michigan Probate Court explained, "the Trusts and the Trustee are really inextricably a part of this federal RICO action". (Pet. App. 77a.)[8]

Under *Cassity*, the federal RICO complaint without question concerned the administration of the trust, and the powers, duties,

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[7] *See also Starr v. Rupp*, 421 F.2d 999, 1004 (6th Cir. 1970) ("The fact that plaintiffs pray for damages instead of an accounting and equitable relief on the identical cause of action unsuccessfully asserted in the Probate Court, does not confer jurisdiction on a federal court."); *Igleheart v. Igleheart*, 402 F. Supp. 1, 4 (S.D. Ind., 1975); *Kittredge v. Stevens*, 126 F.2d 263, 267 (1st Cir.), *cert. denied* 317 U.S. 642 (1942); *Moody v. State of Alabama*, 351 So.2d 552 (Ala., 1977), *cert. denied* 435 U.S. 969, and *cert. denied* 439 U.S. 910 (1978) (rejecting argument that proposed action for money damages under federal anti-trust laws was *in personam* in nature, and finding instead that proposed action was merely a ploy to interfere with state *in rem* or *quasi in rem* proceeding).

[8] The crux of Petitioners' Florida federal complaint (Pet. App. 8a-51a) is the claim that the trustee breached his fiduciary duties and made misrepresentations to injure the trust ("T-1"). *See* ¶ 9. ("At all times material hereto, W.A. Dart has acted as the trustee of T-1, T-2 and T-3"); ¶ 118 ("By virtue of their status as fiduciaries of T-1, . . . W.A. Dart and Claire Dart had a duty to provide complete disclosure . . . ."); ¶ 119 ("By so grossly breaching their fiduciary duties to Thomas Dart, Dart Energy, T-1, and the remaining beneficiaries of T-1, W.A. Dart and Claire Dart . . . ."); ¶¶ 124 and 133 (alleged scheme involved "misrepresentation of the value of the assets taken from T-1," in order to cause "injury to T-1, Dart Energy, Thomas Dart, and all other beneficiaries of T-1"); ¶ 137 ("Plaintiffs Thomas Dart and Judith Dart were injured by the association in fact in that the trust of which they are beneficiaries suffered a loss of hundreds of millions of dollars as a result of defendants' successful effectuation of their scheme.").

and liabilities of the trustee. Allowing the Florida federal RICO action to proceed would have interfered with the jurisdiction of the Michigan Probate Court. Therefore, the Michigan Probate Court properly held Petitioners in contempt for violating the injunction which prohibited such duplicative litigation.[9]

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[9] Notably the court in *Cassity* imposed Rule 11 sanctions that were upheld on appeal:

> The courts have a duty to protect the public from frivolous litigation. There was a day when clever counsel were admired by some for inventive methods to resurrect dead litigation. That day has passed. When counsel seek to relitigate that which has previously been litigated, they must be fully prepared to answer for their actions in continuing to instigate litigation.

Stagner v. Pitts, 1993 W.L. 375809; 7 F.3d 1045 (10th Cir. 1993).

IV.

CONCLUSION

For the reasons set forth above, respondents respectfully request that the Petition be denied.

Respectfully submitted,

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Date: April 1, 1996

No. 95-1410

In The Supreme Court of the United States

THOMAS J. DART, et al.,
Petitioners

v.

W. A. DART, et al.,
Respondents

APPENDIX

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APPENDIX A

First Amended Complaint, September 14, 1993, Sarasota County (Florida) Circuit Court Case No. 93 3804 CA-01

THE CIRCUIT COURT FOR
THE TWELFTH JUDICIAL CIRCUIT,
IN AND FOR SARASOTA COUNTY, FLORIDA

GENERAL JURISDICTION

JUDITH L. DART, THOMAS J. DART, (INDIVIDUALLY AND IN BEHALF OF DART ENERGY CORPORATION AND THE THOMAS J. DART RESIDUAL TRUST),

Plaintiffs,

v.

WILLIAM A. DART, CLAIRE T. DART, KENNETH B. DART, ROBERT C. DART, DART CONTAINER CORPORATION, THE KENNETH B. DART RESIDUAL TRUST, THE ROBERT C. DART RESIDUAL TRUST, DART FINANCIAL CORPORATION, BENJAMIN O. SCHWENDENER, WILLIAM L. MYERS, JOANNE WILLIAMS, RICHARD J. RASTALL, ALAN M. VALADE, and AMERICAN APPRAISAL ASSOCIATES, INC. d/b/a STANDARD RESEARCH CONSULTANTS,

Defendants,

and DART ENERGY CORPORATION AND THE THOMAS J. DART RESIDUAL TRUST,

Nominal Defendants.

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

Case No.: 93-3804 CA-01

FLORIDA BAR NO. 145750

Plaintiffs, Judith L. Dart and Thomas J. Dart, individually and in behalf of Dart Energy Corporation and the Thomas J. Dart Residual Trust, by their undersigned counsel, file this First Amended Complaint against the defendants and allege as follows:

SUMMARY OF THE CLAIMS

1. Through this action, plaintiff Thomas Dart seeks to right the wrongs inflicted on himself, his family and his business as the result of the unscrupulous behavior of his father, defendant William A. Dart ("W.A. Dart"), his brothers, defendants Kenneth and Robert Dart, and others who have been drawn into the conspiracy to deprive Thomas Dart of the legacy bestowed upon him by his late grandfather.

2. As hereinafter described, by threat, intimidation, and coercion, and through a series of calculated maneuvers constituting outright fraud, Thomas Dart's father and brothers (with the aid and abetment of the other defendants) have unlawfully manipulated the trusts created, and the multi-million dollar corporations formed and developed by, Thomas Dart's grandfather. Attempting to deprive him of his grandfather's legacy, Thomas Dart's father, in concert with his other sons, his personal legal counsel and the other defendants named in this action, all of whom are under W.A. Dart's complete domination and control, has:

(a) in nearly innumerable ways, breached his fiduciary duties to Thomas Dart and his family and business;

(b) fraudulently induced, intimidated and coerced an incapacitated son to approve a reorganization of the family businesses, despite the devastating financial effect the reorganization had on Thomas Dart, his family and businesses, and the trust established by his grandfather for his and his family's benefit;

(c) breached and tortiously interfered with the terms of the very agreement he had planned to use as the primary vehicle for depriving Thomas Dart of his grandfather's legacy;

(d) unlawfully conspired to and in fact converted property rightfully belonging to his disfavored son and his family and business; and

(e) in the process inflicted severe emotional harm upon this son and daughter-in-law.

For these wrongs and others more fully described below, the plaintiffs seek redress from this Court.

• • •

THIRTEENTH CAUSE OF ACTION

(Florida Statute § 772.103)

• • •

149. Defendants W.A. Dart, Kenneth Dart, Robert Dart, Benjamin 0. Schwendener, Jr., Richard J. Rastall and Alan M. Valade have engaged in a pattern of criminal activity through an enterprise as defined and described in Florida Statute Section 772.102 and have conspired to purposefully defraud the plaintiffs, Dart Energy and T-1 of the amounts due Dart Energy and T-1 under the terms of the Reorganization. By virtue of such conduct, these defendants, through at least two separate instances of conduct that constitutes theft, knowingly obtained and used property rightfully belonging to Dart Energy and T-1 (and beneficially to plaintiffs) with the intent to permanently deprive Dart Energy and T-1 of the right to such property or the benefit therefrom. Further, by virtue of such conduct, these defendants knowingly misappropriated such property for their own use or for the use of persons (including beneficiaries of T-2 and T-3) not entitled thereto.

• • •

APPENDIX B

Petitioners Memorandum in Response to Brief in Support of Motion to Compel Arbitration and Stay Proceedings, May 12, 1992, Ingham County (Michigan) Probate Court File No. G-6372

STATE OF MICHIGAN
PROBATE COURT
COUNTY OF INGHAM

FILE NO.
G-6372

MEMORANDUM OF LAW IN RESPONSE TO BRIEF IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND TO STAY THE PROCEEDINGS

In the matter of William F. Dart Trust

• • •

Statement of the Case

• • •

The Probate Court exists by virtue of constitutional mandate. Its jurisdiction and powers are established by statute. The legislature of the State has seen fit to vest exclusive jurisdiction of "the internal affairs of all trusts" in the Probate Court. **The consequence of the Probate Court's exclusive jurisdiction is that "no other forum has the jurisdiction to hear and determine the action."** (Emphasis added.)

• • •

APPENDIX C

Transcript of hearing on Respondents'
Motion for Injunction, September 29, 1993

STATE OF MICHIGAN
IN THE PROBATE COURT
FOR THE COUNTY OF INGHAM

IN THE MATTER OF	FILE NO. G-6372
THE WILLIAM F. DART TRUST	HON. DONALD S. OWENS

GUARDIAN AD LITEM'S MOTION FOR INTERVENTION
RESPONDENTS' MOTION FOR INJUNCTION

BEFORE THE HONORABLE DONALD S. OWENS

Mason, Michigan — Wednesday, September 29, 1993

• • •

[THE COURT:] Mr. Driker says, "Well, they're more form than substance, it's basically the same; it's the same transaction, or occurrence, that these arise out of. You can call these by different names, but, really, they're basically the same, and they ought to be litigated here; and by the way, Judge, the Plaintiffs chose Michigan as the forum for their action regarding this whole issue, the Trusts, Reorganization, the Valuation, and so forth; and, since they chose it they shouldn't be allowed now to go somewhere else just because they have partially not succeeded on an issue."

Now, I realize, for Tom Dart, if my decision that he is barred by the statute of limitations from raising certain issues is upheld, that that does prevent him from quite a bit, I realize that, and I can certainly see why he might want to go someplace else where he could litigate those issues and perhaps succeed. That would be, of course, permitting a person to do an end-run around Michigan law and decisions of this Court.

• • •

And I think the authority of the case law is clear, and given the enormous expense and time commitment and the possible losses in this Court from duplicative legislation [sic, "litigation"], that amounts to oppression, the case cited by Mr. Souris, the Respondents in this case, and cannot be tolerated by our courts.

• • •

APPENDIX D

Order Affirming Injunction, May 17, 1994, Ingham County (Michigan) Circuit Court Case No. 93-75904-AV

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF INGHAM

IN THE MATTER OF THE
WILLIAM F. DART TRUST

Circuit Court
No. 93-75904-AV
(Hon. Lawrence M. Glazer)
Ingham County Probate
Court No. G-6372

ORDER AFFIRMING INJUNCTION

At a session of said Court, held in the Ingham County Courthouse, City of Lansing, County of Ingham, State of Michigan on May 17, 1994

PRESENT: HON. Lawrence M. Glazer
Ingham Circuit Court Judge

Appellants, Thomas J. Dart and Judith L. Dart, appeal to this Court from an Order Enjoining Petitioners Thomas J. Dart and Judith L. Dart from Prosecuting Duplicative Litigation entered on October 15, 1993 by Ingham County Probate Judge Donald S. Owens. The Court has considered the brief and reply brief filed by appellants, the brief filed by appellees, W.A. and Claire Dart and Dart Financial Corporation, the brief filed by appellees, Kenneth B. Dart and members of his family and Robert C. Dart and members of his family, and the Report of the Guardian Ad Litem. The Court has also heard oral argument of counsel for appellants, appellees and the Guardian Ad Litem on April 22, 1994. After considering all of the briefs and arguments submitted,

IT IS HEREBY ORDERED that, for the reasons stated on the record in open court on April 22, 1994, the Order Enjoining Petitioners Thomas J. Dart and Judith L. Dart from Prosecuting Duplicative Litigation entered by the Ingham County Probate Court on October 15, 1993, is hereby affirmed in its entirety.

/ S /

Lawrence M. Glazer
Ingham County Circuit Judge

APPENDIX E

Complaint, July 11, 1994, Ingham County (Michigan) Probate Court Civil Action No. 94-10386-CZ

STATE OF MICHIGAN
IN THE PROBATE COURT
FOR THE COUNTY OF INGHAM

IN THE MATTER OF THE WILLIAM F. DART TRUST

THOMAS J. DART,
JUDITH C. DART,
individually and derivatively
on behalf of DART ENERGY
CORPORATION,

Plaintiffs,

v.

W.A. DART, KENNETH DART,
ROBERT DART, CLAIRE DART,
THE KENNETH B. DART RESIDUAL
TRUST, THE ROBERT C.
DART RESIDUAL TRUST,
BENJAMIN O. SCHWENDENER, JR.,
RICHARD J. RASTALL,
ALAN VALADE,
DART FINANCIAL CORPORATION,
DART CONTAINER CORPORATION,
AMERICAN APPRAISAL
ASSOCIATES d/b/a
STANDARD RESEARCH
CONSULTANTS,

Defendants,

and DART ENERGY CORPORATION
and THE THOMAS J. DART
RESIDUAL TRUST,

Nominal Defendants.

COMPLAINT

CIVIL ACTION
NO. 94-10386-CZ

JURY TRIAL
DEMANDED

Plaintiffs Thomas J. Dart and Judith L. Dart, for their Complaint, represent as follows:

* * *

COUNT I

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT 18 U.S.C. §1962(b)

120. Paragraphs 1 through 119 are incorporated herein by reference.

121. Each of the defendants conspired and agreed with the remaining defendants to effectuate the scheme to defraud outlined above, in violation of 18 U.S.C. § 1962(b).

Mailings

122. Having previously devised the scheme described above to defraud plaintiffs and to obtain money and property from them by means of false and fraudulent pretenses and representations, the following defendants deposited or caused to be deposited the following items in the United States mail on the dates indicated, and addressed as indicated, for the purpose of executing that scheme:

a. DATE: May, 1986

RECIPIENTS:	Morgan Stanley SRC
RESPONSIBLE DEFENDANT:	W.A. DART
SENDER:	Robert Gregory, at W.A. Dart's instruction
CONTENTS:	Dart container financial statements, organizational charts, tax sharing agreement, and business summaries
RELATIONSHIP TO SCHEME:	Defendants intended to, and did in fact, retain an independent entity to perform an appraisal so that the value settled upon would appear objective and fair. But defendants intended to, and did in fact, manipulate the supply of information to the company selected so that the appraisal value in fact would not be fair. The first step in this scheme was, necessarily, to arrange for the appointment of an unrelated entity to perform the appraisal.

b. DATE: October, 1986

RESPONSIBLE DEFENDANT	Benjamin 0. Schwendener, Jr.
SENDER	Benjamin 0. Schwendener, Jr.
RECIPIENTS:	Idelle Hawitt, SRC
CONTENTS:	Letter outlining general premises of the proposed reorganization
RELATIONSHIP TO SCHEME:	To facilitate SRC's appraisal

c. DATE: July, 1988

RESPONSIBLE DEFENDANT:	W.A. Dart, Kenneth Dart, Robert Dart, Benjamin 0. Schwendener, Jr., Richard J. Rastall, Alan Valade
SENDER SRC	
RECIPIENTS:	W.A. Dart, Robert Gregory
CONTENTS:	Draft SRC appraisal
RELATIONSHIP TO SCHEME:	An essential part of the scheme was that SRC produce an appraisal that appeared to be based on input from all affected parties and on consideration of all information supplied. To effectuate this goal it was necessary for SRC to allow Gregory as well as W.A. Dart to see a draft of SRC's work product and to comment thereupon.

d. DATE: January, 1993

RECIPIENT:	Thomas Dart
RESPONSIBLE DEFENDANT:	W.A. Dart
SENDER:	W.A. Dart
CONTENTS:	Fraudulent "promissory note" dated 1978
RELATIONSHIP TO SCHEME:	W.A. Dart refused to cause T-1 to pay back funds it had borrowed from Thomas Dart in order to prevent Thomas Dart from being able to pay attorneys to investigate and prosecute the claims at issue in this Complaint

and other claims. The fraudulent promissory note was an effort to substantiate W.A. Dart's fraudulent claim that the loan had never been made on its true terms.

Each such mailing was a separate act of mail fraud in violation of 18 U.S.C. § 1341. Each was also a separate act of racketeering activity within the meaning of 18 U.S.C. § 1961.

Wire Communications

123. Having previously devised the scheme described above to defraud plaintiffs and to obtain money and property from them by means of false and fraudulent pretenses and representations, the following defendant transmitted or caused to be transmitted information by wire in interstate commerce on the dates indicated, and to the persons indicated, for the purpose of executing that scheme:

a. DATE: August and September, 1986

RESPONSIBLE DEFENDANT:	W.A. Dart
PARTICIPANTS IN CALL:	W.A. Dart, Robert Gregory
SUBSTANCE OF COMMUNICATION:	W.A. Dart directed Gregory that all information and contact with SRC during the appraisal should be exclusively through W.A. Dart.
RELATIONSHIP TO SCHEME:	This directive enabled W.A. Dart to control the flow of information to SRC, and also enabled him to speak in confidence to SRC when he ordered SRC to produce an inaccurately low appraisal of Dart Container.

b. DATE: February, 1987

RESPONSIBLE DEFENDANT:	W.A. Dart
PARTICIPANTS IN CALL:	W.A. Dart, Robert Gregory
SUBSTANCE OF COMMUNICATION:	This telephone conversation concerned appraisal methods to be used by SRC.
RELATIONSHIP TO SCHEME:	W.A. Dart spoke by telephone with Robert Gregory regarding the SRC valuation in order to advance his and the remaining defendants' goal of ensuring that SRC issued an appraisal that appeared to be objective and exhaustive but that in fact set a fraudulently low value on Dart Container.

c. DATE: March, 1987

RESPONSIBLE DEFENDANT:	W.A. Dart
PARTICIPANTS IN CALL:	W.A. Dart, Robert Gregory
SUBSTANCE OF COMMUNICATION:	W.A. Dart instructed Gregory that all data to be supplied to SRC should be sent by Gregory to W.A. Dart, who would then forward it to SRC.
RELATIONSHIP TO SCHEME:	This directive enabled W.A. Dart to control the flow of information to SRC, and also enabled him to speak in confidence to SRC when he ordered SRC to produce an inaccurately low appraisal of Dart Container.

d. DATE: June 3, 1991

RESPONSIBLE DEFENDANT:	W.A. Dart
PARTICIPANTS IN CALL:	W.A. Dart, Robert Gregory
SUBSTANCE OF COMMUNICATION:	This telephone conversation, which was initiated by W.A. Dart, concerned valuation methods and the SRC report. Gregory stated his belief that SRC had been ordered to produce an inaccurately low valuation of Dart Container. W.A. Dart falsely stated that neither he nor any other person had influenced SRC in its valuation.
RELATIONSHIP TO SCHEME:	W.A. Dart made this statement to conceal and advance his and the remaining defendants' scheme to obtain control over Dart Container at a price less than the fair value of these assets.

Each such communication was a separate act of wire fraud in violation of 18 U.S.C. § 1343. Each was also a separate act of racketeering activity within the meaning of 18 U.S.C. § 1961.

124. The acts by each of these defendants were all related to one another in that they shared a common goal, a common method, and a common set of victims, all of which had been jointly agreed upon by the defendants: the removal of Thomas Dart from participation in Dart Container at the lowest possible cost to T-2, T-3, Kenneth Dart, Robert Dart, Claire Dart, and W.A. Dart, through misrepresentation of the value of the assets taken from T-1. The lower the cost to these persons and entities, the greater the injury to T-1, Dart Energy, Thomas Dart, and all other beneficiaries of T-1. Each of the communications identified in paragraphs 122 and 123 advanced this goal in the method indicated.

125. These acts satisfy the continuity requirement imposed by the Racketeer Influenced and Corrupt Organizations Act in that they each shared and together advanced a common goal, a common method, a common set of victims, and in that they continued over a period of at least eight years, from 1986 through the present.

126. The mailings and wire communications were in furtherance of the scheme in that each either facilitated defendants' goal of causing SRC to produce an inaccurately low appraisal of SRC, concealed the defendants' awareness of the inaccuracy of the valuation thus produced, or both.

The Enterprise

127. Dart Container Corporation is an enterprise engaged in interstate and foreign commerce.

128. The purpose and effect of defendants' scheme was to obtain and maintain control over Dart Container Corporation. Defendants achieved this goal through the pattern of racketeering activity alleged in paragraphs 120 through 126 above, in violation of 18 U.S.C. § 1962(b).

129. Defendants bear the following relationship to the enterprise:

NAME	RELATIONSHIP
W.A. Dart	Chairman of the Board
Kenneth Dart	Officer and director
Robert Dart	Officer and director
Claire Dart	50% shareholder
Benjamin 0. Schwendener, Jr.	Director, Vice President and Counsel
Richard J. Rastall	Counsel
Alan Valade	Counsel

130. The affairs of the enterprise affect interstate and foreign commerce in that Dart Container maintains operations in at least twelve states, and around the world, and has annual revenues in excess of $900 million.

COUNT II
Racketeer Influenced and Corrupt Organizations Act
18 U.S.C. §1962(c)

131. Paragraphs 1 through 130 are incorporated herein by reference.

132. An association in fact existed among defendants W.A. Dart, Kenneth Dart, Robert Dart, Claire Dart, Benjamin 0. Schwendener, Jr., Richard J. Rastall, and Alan Valade, which constitutes an enterprise for purposes of 18 U.S.C. § 1962(c).

133. The shared purpose of this association in fact was the removal of Thomas Dart from participation in Dart Container at the lowest possible cost to T-2, T-3, Kenneth Dart, Robert Dart, Claire Dart and W.A. Dart, through misrepresentation of the value of the assets taken from T-1. The lower the cost to these persons and entities, the greater the injury to T-1, Dart Energy, Thomas Dart, and all other beneficiaries of T-1. Each of the communications identified in paragraphs 122 and 123 advanced this goal in the method there indicated and as more fully alleged in paragraph 124 above.

134. The structure of this association in fact remained the same from the time of its creation — when the goals identified in paragraph 124 were agreed upon — through to the present. The most active participants in the association in fact, and those principally responsible for carrying out its goals, were and are W.A. Dart and Kenneth Dart.

135. Each of the defendants identified in paragraph 132 participated in the conduct of this association in fact through a pattern of racketeering activity, as set forth in paragraphs 122 and 123 above.

136. The association in fact affected interstate commerce in that its purpose and effect was to obtain control over Dart Container Corporation, which is an entity engaged in interstate commerce. The association in fact also affected interstate commerce by using the mails and interstate wire communications to effectuate its goal.

137. Plaintiffs Thomas Dart and Judith Dart were injured by the association in fact in that the trust of which they are beneficiaries suffered a loss of hundreds of millions of dollars as a result of defendants' successful effectuation of their scheme.

138. Plaintiff Dart Energy was injured by the association in fact in that, under the 1986 Reorganization Agreement, payments were supposed to be made to Dart Energy sufficient to equalize the value of that company and the value of one-third of Dart Container. As a result of defendants' scheme, effectuated through the association in fact alleged herein, these payments were hundreds of millions of dollars less than they should have been.

* * *

APPENDIX F

Thomas J. Dart's First Amended Petition, October 2, 1992, Ingham County (Michigan) Probate Court File No. G-6372

STATE OF MICHIGAN
PROBATE COURT
COUNTY OF INGHAM

FIRST AMENDED
PETITION

FILE NO. G-6372

In the matter of William F. Dart Trust

* * *

77. In July 1990, when Petitioner was in W.A. Dart's office, W.A. Dart gave Petitioner a document which has subsequently been marked as Petitioner's Deposition Exhibit P-15. Petitioner was asked to sign this document in order to guarantee Dart container of California a "most favored customer" status as a Dart Energy customer, and hence advance certain tax arguments being made to the California taxing authorities. In reviewing this document, Petitioner noted that buried within it were waivers of objections to the 1986 Reorganization and its valuations. Petitioner refused to sign the document.

* * *

APPENDIX G

W.A. Dart's Deposition Transcript, August 26, 1992, Ingham County (Michigan) Probate Court File No. G-6372

STATE OF MICHIGAN
IN THE PROBATE COURT
FOR THE COUNTY OF INGHAM

IN RE: WILLIAM F. DART TRUST — VOLUME II

VIDEO DEPOSITION

of WILLIAM A. DART, a witness called by Petitioner, taken before Diane M. Spaniolo, Certified Shorthand Reporter and Notary Public, on Wednesday, August 26, 1992, at 313 South Washington Square, Lansing, Michigan, noticed for the hour of 9:00 a.m.

• • •

Q [BY MR. BOIES:] Let me turn to Exhibit P-15. You indicated that you had told Mr. Schwendener to take out certain language related to valuation. That language relating to valuation that you instructed Mr. Schwendener to take out was language contained in Exhibit P-15 is that correct?

A. Yes.

Q. How did you happen to tell Mr. Schwendener to take this language out?

A. I believe Tom contacted me and told me that he wouldn't sign it with that in there.

Q. Do you recall meeting with your son Tom on or shortly before July 11, 1990 in your office?

A. I don't remember that specific date, but perhaps you can refresh my memory with what may have occurred.

Q. Do you recall a time in or about the summer of 1990, which I believe was in July, when your son Tom visited you in your office and had with him one of his sons, one of your grandchildren, and you gave him a copy of Exhibit P-15?

A. I don't recall that specifically.

Q. Do you recall that generally?

A. I didn't recall handing this to Tom directly.

• • •

APPENDIX H

Notice of Voluntary Dismissal, September 2, 1994,
Ingham County Probate (Michigan) Court
Civil Action No. 94-10386-CZ

STATE OF MICHIGAN
IN THE PROBATE COURT
FOR THE COUNTY OF INGHAM

IN THE MATTER OF THE WILLIAM F. DART TRUST

THOMAS J. DART,
JUDITH C. DART,
individually and derivatively
on behalf of DART ENERGY
CORPORATION,

Plaintiffs,

v.

W.A. DART, KENNETH DART,
ROBERT DART, CLAIRE DART,
THE KENNETH B. DART RESIDUAL
TRUST, THE ROBERT C.
DART RESIDUAL TRUST,
BENJAMIN O. SCHWENDENER, JR.,
RICHARD J. RASTALL,
ALAN VALADE,
DART FINANCIAL CORPORATION,
DART CONTAINER CORPORATION,
AMERICAN APPRAISAL
ASSOCIATES d/b/a
STANDARD RESEARCH
CONSULTANTS,

Defendants,

and DART ENERGY CORPORATION
and THE THOMAS J. DART
RESIDUAL TRUST,

Nominal Defendants.

NOTICE OF
VOLUNTARY
DISMISSAL

CIVIL ACTION
NO. 94-10386-CZ

The Plaintiffs, Thomas J. Dart and Judith L. Dart, by their attorneys, voluntarily dismiss this civil action, without prejudice,

pursuant to MCR 2.504(A)(1)(a). To the best of our knowledge, no adverse party has served an answer or a motion under MCR. 2.116.

FRASER, TREBILCOCK, DAVIS & FOSTER, P.C.

September 2, 1994

By: /s/
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